

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DOROTHY CROSS HOOD, as Widow of Roger
Neal Hood, Deceased, Individually, and
on behalf of Robert Dale Hood, and as
Natural Guardian of Lia Diane Hood and
Laura Ann Hood, Minors, the Heirs-at-
Law and Wrongful Death Beneficiaries
of Roger Neal Hood, Deceased,

Plaintiff

V.

NO. 3:93CV111-B-A

KELLY JO VINCENT and JOE E. VINCENT
d/b/a VINCENT BOOT & SHOE COMPANY,
Defendants

ORDER

This cause comes before the court on the plaintiff's objection to the United States Magistrate Judge's order denying amendment, defendant Joe Vincent's motion for summary judgment, and the defendants' motion for partial summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

Objection to Order Denying Amendment

The plaintiff objects to the magistrate judge's order denying leave to amend the complaint to assert a claim of negligent entrustment against Linda Vincent and Vincent Jobbing Company. Upon due consideration, the court finds that the order is not contrary to law or an abuse of discretion. Accordingly, the order is **AFFIRMED**.

Motion for Summary Judgment

The plaintiff alleges that defendant Joe Vincent was the owner of the vehicle operated by defendant Kelly Jo Vincent and negligently entrusted the vehicle to Kelly Jo Vincent.¹ The defendant must be the owner of the vehicle in order to be liable for negligent entrustment of the vehicle. Hood v. Dealers Transport Co., 459 F. Supp. 684, 685-86 (N.D. Miss. 1978) (construing Mississippi law). The threshold issue before the court is whether Joe Vincent was the owner of the vehicle at the time of the subject accident.

The following facts are undisputed. Kelly Jo Vincent was the registered owner designated in the certificate of title issued by the State of Tennessee on September 23, 1991. On August 24, 1991 Joe Vincent paid for the purchase of a vehicle and gave it to his daughter, Kelly Jo Vincent. Both title and possession were transferred to Kelly Jo Vincent. The vehicle was insured under a commercial insurance policy covering both company-owned vehicles and vehicles owned by individual family members not used for business purposes. Vincent Boot & Shoe Company was designated as the owner of all the insured vehicles on the insurance application forms and policy. The insurance claim pertaining to the subject

¹The plaintiff concedes that the doctrine of respondeat superior is not applicable to the facts of this cause. As stated in her memorandum in opposition to the motion for summary judgment, "Plaintiff's claim against Joe E. Vincent, d/b/a/ Vincent Boot and Shoe Company is solely based on the doctrine of negligent entrustment."

accident designated Vincent Boot & Shoe Company as the owner. Insurance agent Mike Rooks testified in his deposition that he was aware that some of the insured vehicles were individually owned and acknowledged that the policy incorrectly designated Vincent Boot & Shoe Company as the owner of the subject vehicle. Insurance agent Cynthia Hudson testified in her deposition that she advised the underwriting insurance carrier that some of the vehicles were individually owned. Checks were issued regularly from the joint checking account of Kelly Jo Vincent's parents to pay for insurance premiums and auto-related expenses, including maintenance, repair, gasoline, oil and license tag expenses.² Checks were also issued from the joint checking account of Kelly Jo Vincent's parents to pay for many of her traffic citations. Joe Vincent never imposed any restrictions on Kelly Jo Vincent's driving of the subject vehicle. Linda Vincent, Kelly Jo Vincent's mother, often drove the subject vehicle while Kelly Jo Vincent was living or visiting at her parents' home.

The certificate of title is prima facie evidence of Kelly Jo Vincent's ownership. Woodard v. St. Louis-San Francisco Ry. Co., 418 F.2d 1305, 1306 n.1 (5th Cir. 1969) (construing Mississippi law) ("The evidence shows registration of the truck in the name of the husband, establishing prima facie his ownership,

²With the exception of a part-time job as a waitress for three or four months, Kelly Jo Vincent, a college student, was financially dependent on her parents.

and there is no evidence to the contrary"). Without citing any authority, the plaintiff argues that the above-referenced facts rebut the presumption of Kelly Jo Vincent's ownership. The court finds that the mere purchase of the vehicle by Joe Vincent is insufficient to rebut the prima facie case of ownership since the ownership was transferred to Kelly Jo Vincent in the form of a gift immediately after purchase, almost two years prior to the subject accident. The court further finds that a person is not in fact made the true titleholder by designation as such for insurance purposes. See Dempsey v. Frazier, 80 So. 341, 342 (Miss. 1919) (father who purchased and gave an automobile to his son several years prior to filing of negligence suit not liable for son's negligent driving). In addition, payment of insurance, maintenance and repair expenses by a father for his daughter's auto expenses while she is in college are not necessarily incidents of ownership. The fact that Kelly Jo Vincent had possession and use of the vehicle, without any restriction, is consistent with her recorded title ownership. The above-referenced payments and Linda Vincent's use of the vehicle do not negate Kelly Jo Vincent's primary control of the vehicle. The court finds that Kelly Jo Vincent owned, operated and controlled the vehicle at the time of the accident and is, therefore, solely liable for her own negligence. Since Joe Vincent was not the owner at the time of the accident, he cannot be liable under the doctrine of negligent entrustment.

For the foregoing reasons, the motion for summary judgment is **GRANTED** and the claims against defendant Joe Vincent are **DISMISSED WITH PREJUDICE**.

Motion for Partial Summary Judgment

Kelly Jo Vincent moves for partial summary judgment on the punitive damages issue.³ In Mississippi punitive damages are warranted if the injuries are "inflicted in the spirit of wanton disregard for the rights of others [or through] gross negligence, evincing ruthless disregard for the rights of others, so as to take the case out of the ordinary rule." Fowler Butane Gas Co. v. Varner, 141 So.2d 226, 233 (Miss. 1962) quoted in Aldridge v. Johnson, 318 So.2d 870, 872-73 (Miss. 1975). Upon due consideration, the court finds that taking the evidence in the light most favorable to the plaintiff at this stage of the proceedings, there does exist a material issue of fact as to whether Kelly Jo Vincent's negligent driving amounts to gross negligence in light of her familiarity with the intersection and the presence of four visible traffic signals. Therefore, the motion for partial summary judgment as to the punitive damages claim against defendant Kelly Jo Vincent is **DENIED**.

THIS, the _____ day of March, 1995.

³Defendant Joe Vincent joined in the motion for partial summary judgment. Since his motion for summary judgment is granted, the motion as to the punitive damages claim against him is now moot.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE